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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-186741

DATE: November 30, 1976

MATTER OF: Mark L. Groeschen - Reimbursement of real estate broker's commission

DIGEST: Transferred employee seeks reimbursement of full amount of 8 percent real estate broker's commission he paid when he sold his residence at his old duty station. Information supplied by local HUD office indicated that 6 percent was the prevailing rate. HUD statement regarding prevailing commission rate creates rebuttable presumption of prevailing rate, and is proper rate for reimbursement when no evidence to the contrary is presented. Accordingly, in this case reimbursement at 6 percent rate was proper.

This matter concerns a request for certification of a claim by an authorized certifying officer of the Internal Revenue Service (IRS) regarding the propriety of reimbursing a greater real estate broker's commission to a transferred employee, Mr. Mark L. Groeschen.

The claim arose in connection with Mr. Groeschen's change of official post of duty from Memphis, Tennessee, to Indianapolis, Indiana, as authorized on Form 4253, Authorization for Moving Expenses dated August 23, 1974. Mr. Groeschen sold his condominium in Memphis on November 25, 1974, for \$21,285. He paid his broker an 8 percent commission of \$1,702.80. As part of its review of Mr. Groeschen's claim, IRS requested that the Memphis Office of the Federal Housing Administration, Department of Housing and Urban Development (HUD), provide them with the amount of the typical real estate broker's commission in this area. By letter of December 9, 1974, HUD advised IRS that a typical commission rate for the re-sale of a condominium in Memphis was 6 percent. IRS then limited Mr. Groeschen's reimbursement for the real estate commission to 6 percent or \$1,277.17. Subsequently, Mr. Groeschen submitted a reclaim voucher seeking reimbursement of \$425.63, the difference between the 6 percent commission allowed and the 8 percent commission he had paid to the broker.

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In support of his position Mr. Groeschen argues that condominiums in the Memphis area were not selling well, thus necessitating more time and effort on the broker's part, and that many other condominiums had been sold at an 8 percent commission rate. Mr. Groeschen also contends that he is entitled to reimbursement of the full 8 percent commission because he had been advised by the personnel office at Indianapolis that the real estate commission should not exceed a total of 10 percent.

The statutory authority for reimbursing real estate expenses is found in 5 U.S.C. 5724(a)(4) (1970), which provides in part that there may be reimbursement of:

"Expenses of the sale of the residence (or the settlement of an unexpired lease) of the employee at the old station and purchase of a home at the new official station required to be paid by him when the old and new official stations are located within the United States, its territories or possessions, the Commonwealth of Puerto Rico, or the Canal Zone. However, reimbursement for brokerage fees on the sale of the residence and other expenses under this paragraph may not exceed those customarily charged in the locality where the residence is located * * *," (emphasis added.)

This provision has been implemented by the statutory regulations, Federal Travel Regulations (FPMR 101-7), para. 2-6.2a (May 1973), which provides in part that:

"* * * A broker's fee or real estate commission paid by the employee for services in selling his residence is reimbursable but not in excess of rates generally charged for such services by the broker or by brokers in the locality of the old official station. No such fee or commission is reimbursable in connection with the purchase of a home at the new official station," (Emphasis added.)

FTR, para. 2-6.3c (May 1973) provides that local or area offices of HUD should be consulted to determine what charges are customary in the locality, and that this information should serve as a guideline, not as a rigid limitation on the reimbursement allowed.


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In effect, the information supplied by HUD creates a rebuttable presumption as to the prevailing brokerage commission rate which can be overcome by presenting other evidence as to the prevailing commission rate. Without such evidence, the presumption created by the information supplied by HUD must stand and is controlling. See B-182850, July 14, 1975. In the present case, Mr. Groeschen has presented no evidence to support his statement that many other condominiums had been sold at an 8 percent rate or that 8 percent was the prevailing rate. Moreover, in Comptroller General Decision B-182431, July 14, 1975, it was held that when a commission rate greater than the rate that is customarily charged is paid to expedite the sale of the residence, there can be no reimbursement of the excess above the prevailing rate. Therefore, Mr. Groeschen's contention that the 8 percent rate was paid because condominiums were not selling well in the Memphis area does not justify reimbursement of the excess commission paid above the 6 percent prevailing rate.

Mr. Groeschen's unsupported allegation that the Personnel Office advised him that the commission should not exceed 10 percent, assuming it to be true, does not entitle him to reimbursement of the excess paid above the 6 percent prevailing rate. We note that the 10 percent rate indicated by the Personnel Office was probably a reference to the overall limitation on real estate expenses found at para. 2-6.2g of the FTR (May 1973). While para. 2-6.2g limits the aggregate amount of expenses which may be reimbursed, para. 2-6.2a of the FTR (May 1973) still serves to limit reimbursement for the broker's commission to the rate generally charged by brokers in the locality.

For the above-stated reasons, the reclaim voucher may not be certified for payment.

Deputy


Comptroller General
of the United States